

**State of Utah****Department of
Natural Resources**

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**Division of
Oil, Gas & Mining**

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Lieutenant Governor

June 7, 2006

CERTIFIED MAIL
7004 2510 0004 1824 3434

Chuck Semborski, Environmental Supervisor
Energy West Mining Company
P.O. Box 310
Huntington, Utah 84528

Subject: Findings of Fact, Conclusions, Order and Finalized Assessment for
N06-39-1-1, Deer Creek Mine, PacifiCorp, C/0015/0018, Emery County, Utah,
Outgoing File

Dear Mr. Semborski:

On April 24, 2006, an Informal Conference was held to review the fact of violation and proposed assessment for violation N06-39-1-1. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the attached documents shall constitute the findings of fact, conclusions, order, and finalized assessment.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed below.

Sincerely,

Mary Ann Wright
Associate Director, Mining
Assessment Conference Officer

Enclosures

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UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR **FINAL** ASSESSMENT OF PENALTIES

COMPANY: Energy West Mining/ Pacificorp, Deer Creek Mine
PERMIT: C/015/0018
VIOLATION: N06-39-1-1

ASSESSMENT CONFERENCE OFFICER (ACO): Mary Ann Wright

	Proposed Assessment On 6/2/06	Final Assessment on 6/2/06
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	<u>15</u>	<u>10</u>
(3) Negligence	<u>15</u>	<u>16</u>
(4) Good Faith	<u>-15</u>	<u>-15</u>
Total Points	<u>15</u>	<u>11</u>

TOTAL ASSESSED FINE \$ 242.00

NARRATIVE:

Samples were collected for 4 sites and entered into coal mining water data base but it appears they did not register. NOV is vacated as to those four sites. Seriousness: Final assessment is for a "potential" (vs. "actual") hindrance violation. It was assessed as 'somewhat high' potential since in-mine samples are critical to assessing the entire hydrologic balance. Negligence: Operator acknowledged that in-mine samples were not collected within the required quarter; that they were collected the 5th day after the end of the quarter for reasons of focusing on an in-mine drilling program. Assessed at the level of greater degree of fault for 'lack of diligence' in complying with rule R645-301-731.212. Good Faith: Abatement was not required. However, operator took immediate steps to input data from missing two water samples to the database so points were previously awarded in the proposed assessment and retained in the final assessment.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

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BEFORE THE DIVISION OF OIL, GAS AND MINING
COAL REGULATORY PROGRAM
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE	:	INFORMAL CONFERENCE
Deer Creek Mine,		For N06-39-1-1
Energy West Mining/ Pacificorp	:	FINDINGS, CONCLUSIONS
EMERY COUNTY, UTAH		AND ORDER
		CAUSE NO. C/015/0018

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On April 24, 2006, the Division of Oil, Gas and Mining ("OGM") held an Informal Conference concerning the Assessment of Violation N06-39-1-1, issued to Energy West Mining (EWM) Co., Deer Creek Mine, Emery County, Utah. The following individuals attended: Doug Johnson, Ken Fleck, Chuck Semborski, and Dennis Oakley for EWM; and Daron Haddock, Pam Grubaugh-Littig, Dana Dean, Steve Demczak, and Jim Smith from OGM.

Presiding: Mary Ann Wright
Associate Director, Mining
Division of Oil, Gas and Mining

Petitioner: Energy West Mining/PacifiCorp

The Findings, Conclusions, and Order and Final Assessment in this matter are based on information presented during the conference by both the Petitioner and OGM representatives, both written and oral. Written comments and notes from the conference are in OGM files. And, a copy of OGM written information was provided to the Petitioner.

FACTS PRESENTED: Assessment of the Violation

1. By letter dated February 23, 2006, Mr. Chuck Semborski, Geology and Permitting Manager at Energy West Mining requested that the fact of violation and the proposed penalty assessment for N06-39-1-1 be reviewed.

2. Pursuant to Utah Code Ann. Section 40-10-20 and Utah Administrative Rules R645-401-700, notice of the informal conference was properly given and an informal conference in the matter was held on April 24, 2006.
3. The Violation was issued on 2/8/06 for failure to submit water-monitoring data within 90 days for the third quarter of 2005. The rule violated was R645-300.143 and R645-301-731.212 and .223.
4. The Violation was abated on the same day it was noted during an inspection on 2/06/06.
5. Mr. Steve Demczak presented a package of information including: correspondence regarding the violation, information from the permit, the violation, and the rules. Steve went through the package and explained the information provided.
6. The Petitioner provided a package of information and emails concerning missing data. Rules require water-monitoring data to be gathered and submitted every three months. Two samples were admittedly taken late, outside of the three-month sampling quarter. Four samples were taken and entered, but for unknown reasons were not 'in the pipeline' to be uploaded into the database. This 'failure to upload' was not known to the petitioner but was corrected by them when it was brought to their attention. Petitioner believes they make a very strong effort to collect and submit the data in a timely manner and they take this requirement seriously. The petitioner is supportive of the coal mining water data base effort. Petitioner objected to receiving the NOV as a reflection of a serious failure on Energy West's part and believes the NOV was not justified. Petitioner stated there was also a mix-up of numbers designating one of the sites (346; 374?) and that also caused a problem in not knowing the number was changed in the database. They also were under the understandings that a grace period of 15 days exists in submitting data late to OGM and that notifying OGM that data will be late is a release from responsibility to submit the data on time as required by rule.

7. Division representatives stated that they were striving to treat all permittees in the most fair and consistent manner possible. They also explained that the notion of a policy of a 'grace period' is a misunderstanding by the permittee. (Such a policy of a 'grace period' applying to an outside group would have to be a rule according to state law.) Database manager, Dana Dean, explained the shortcomings of the database notification system in identifying data that does not upload from the pipeline.
8. Daron Haddock, assessment officer for OGM stated he had looked for guidance to similar NOV's for the seriousness and negligence points and had assigned them in the mid-range. Good faith points were awarded for this NOV.

CONCLUSIONS

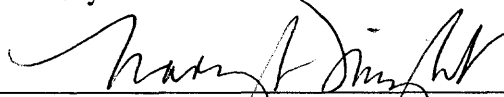
- Coal NOV06- 39-1-1 was assessed by OGM for 15 penalty points, a fine of \$330.00.
- Petitioner provided basis for reviewing the fact of the violation and for reducing the penalty points and fine.
- OGM properly assessed the proposed penalty points based on prior NOV's as a guide.
- It is difficult to know if, or why, some of the 'pipeline' data does not upload. The frequency of the occurrence of this is not known by the ACO.
- Petitioner was outside of the required sampling period for two samples.
- Coal rules require both sampling and submittal "at least every three months for each monitoring location."
- Based on the information presented, the NOV is vacated for that portion pertaining to four samples that EWM maintains were entered into the data base system, and the NOV is upheld for the two sites that were sampled outside of the sampling quarter.
- A final assessment of the violation is made based on the information provided.

ORDER

NOW THEREFORE, it is ordered that:

- The final assessment for the violation is changed to 11 penalty points, with a fine of \$242.00.

SO DETERMINED AND ORDERED this 7th day of June 2006

A handwritten signature in black ink, appearing to read "Mary Ann Wright", is written over a horizontal line.

Mary Ann Wright, Associate Director, Mining
Informal Conference Officer
Division of Oil, Gas and Mining
State of Utah

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